

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-110**

DANIEL LELAND

APPELLANT

**VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

**** ** ***

The Board at its regular May 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 28, 2013, having noted Appellee's exceptions, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 14th day of May, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy mailed this day to:

Hon. Joseph Lane
Hon. Wesley Duke
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
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This matter came on for an evidentiary hearing on August 28, 2012, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Daniel Leland, was present and was represented by the Hon. Joseph Lane. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Wesley Duke.

BACKGROUND

1. The Appellant, Daniel Leland, was a Correctional Officer at the Eastern Kentucky Correctional Complex (EKCC). On May 10, 2012, Appellant filed an appeal with the Personnel Board appealing his termination by resignation on March 17, 2012. Appellant provided the following statement of fact relating to his appeal:

The stated reasons for terminating Mr. Leland was failure to call in when Mr. Leland was absent from work. However, Mr. Leland was unable to call in, because he was denied use of a phone since he was in protective custody at Big Sandy Regional Detention Center. Mr. Leland's supervisors knew his location and his situation. Thus, his failure to call in should be excused.

2. By Interim Order dated June 15, 2012, it was established that the issue for the evidentiary hearing was whether or not there was just cause for the resignation of the Appellant pursuant to regulation. The burden of proof was placed upon the Appellee.

3. **Betty Lindon** is a Human Resource Administrator at EKCC, a position she has held since 2010. Her duties include hiring staff, processing worker's compensation claims, maintaining OSHA records, managing employee benefits, and disciplinary actions.

4. Lindon was asked to recall the events that transpired on March 2, 2012. She stated that a devastating tornado hit West Liberty that day and all officers at EKCC were instructed to provide coverage every day, even if they had previously been scheduled off work. Appellant, a Correctional Officer at EKCC, was notified that all "off" days were suspended. Appellant was scheduled for a regular shift on March 5, 2012. Lindon did not know if he worked that day, but did testify that he never reported back to work after that. Asked if he ever notified anyone of his absence, Lindon responded: "Not to my knowledge."

5. Lindon stated that, "The rule for security staff is to call if they can't come in. This is an institutional policy all employees agree to abide by. They have to call at least one hour prior to their shift to notify a supervisor because we have to provide full coverage for the facility."

6. Lindon stated that they did not hear from Appellant until the end of March, 2012, although she could not recall the exact day. She estimated that at least twenty days had elapsed between Appellant's next scheduled work day and the day he called in. She prepared a letter "resigning him" from employment, pursuant to 101 KAR 2:102, Section 10(3) for the Warden's signature. She mailed it certified mail on March 13, 2012, and by regular mail the next day. The letter was introduced as Appellee's Exhibit 2, and is attached as **Recommended Order Attachment A**.

7. Lindon stated that the certified return receipt was signed by Appellant and returned to the Personnel Department at EKCC, but there was no date on the return receipt indicating when Appellant received it, nor did Lindon date stamp it when it was returned to her office.

8. Lindon testified that she was aware that Appellant had been arrested during this timeframe, because she "saw it on the news," but did not recall the exact date when she first learned of his incarceration. She did know he was being held at the Big Sandy Detention Center.

9. On cross-examination, Lindon recalled that Appellant had been approved to take off March 6, 2012, by Senior Captain Keith Helton. His next scheduled work day would have been March 7, 2012.

10. Lindon stated the only effort to contact Appellant was the "AWOL" letter she sent March 13, 2012.

11. Lindon began processing Appellant's resignation on March 21, 2012.

12. Sometime in April 2012, a hearing regarding Appellant's claim for Unemployment Insurance was held. During that hearing Appellant's situation during the time he was "AWOL" came to light. Appellant disclosed that "he was in jail, in protected custody, and said he was not allowed to use the phone." Lindon informed the Warden of this and she "assumed he called Internal Affairs to investigate."

13. Lindon was asked if she had accepted phone calls in the past from family members reporting an employee's absence. She replied: "It depends on the circumstances." Lindon reconfirmed that neither she, nor anyone else to her knowledge, had ever tried to call Appellant during his absence.

14. **Warden Gary Beckstrom** has been the Warden of EKCC for the past two years. He testified that on March 2, 2012, a tornado came through West Liberty and it was "all hands on deck for the next two and a half weeks." The employees of EKCC were told by their shift commanders that all days off were cancelled.

15. Beckstrom stated that when he learned of Appellant's allegation that he was not allowed to make phone calls while he was incarcerated at the Big Sandy Detention Center, he contacted Internal Affairs Investigator Asa Kemplin. Kemplin's investigation revealed that Appellant "was indeed afforded the opportunity to use the phone on a daily basis and had used the phone on several occasions . . ." (Appellee's Exhibit 3, Memorandum from Asa Kemplin to Warden Beckstrom).

16. Beckstrom stated that when Appellant called him sometime after his release from Big Sandy Detention Center, at the end of March 2012, Appellant informed Beckstrom that he had spoken to either Lt. Shane Nichol or Lt. James Beck to disclose the circumstances regarding his absence from work. Beckstrom spoke to both Nichol and Beck, and both men denied Appellant had ever contacted them.

17. Beckstrom was asked if there had been times in the past when calls had been accepted from family members to explain an employee's absence. Beckstrom answered that "in certain circumstances" that is acceptable, and referenced an occasion when the son of an employee who had suffered a serious injury called in for him.

18. Beckstrom testified that he was never contacted by a member of Appellant's family.

19. On cross-examination, Beckstrom stated he was aware that Appellant had been arrested and incarcerated. When asked if he knew how disrupted the court system had been after the tornado, he answered that he was aware the "holding place" had been moved.

20. **Asa Kemplin** was employed as an Internal Affairs Lieutenant at EKCC until his retirement on July 13, 2012. Warden Beckstrom asked Kemplin to contact Byron Hansford, the Investigator at Big Sandy Detention Center. Hansford informed Kemplin that Appellant had been allowed to use the phone daily and sent Kemplin a CD of recorded phone calls and a video showing Appellant using a telephone.

21. Kemplin wrote a memorandum to Warden Beckstrom on July 20, 2012, detailing his conversations with Hansford and listed the dates of the video and phone calls.

22. **Byron Hansford** is an Intelligence Officer with the Big Sandy Detention Center. Prior to working at Big Sandy, he was employed by the Kentucky State Police for twenty-two years.

23. Hansford testified that Appellant arrived at Big Sandy on March 5, 2012, and stayed there fourteen days. Big Sandy is a regional jail for pre-trial detainees and inmates. The total population housed there is approximately 220.

24. Hansford was asked to address how inmates gain access to telephones. Hansford stated that if an inmate is "in population" – that is, if he is in a cell with a group of people, he has access to a phone twenty-four hours per day. If an inmate is in "segregation," that is, protected custody, he has use of the phone "by request."

25. When Appellant first entered Big Sandy on March 5, 2012, as was standard operating procedure, he was placed directly in "Detox," where he remained for two days. Hansford stated that to his knowledge Appellant did not request to use the phone at this time.

26. Upon Appellant's request, he was then placed into the Segregation Unit due to his work history at the Department of Corrections. In "Seg" you request phone use by alerting a guard. Hansford added that phone cards are available for purchase in the commissary, where they can be bought by family members. Appellant's family had purchased several phone cards for him, but there was no record that he had used any of them.

27. Hansford stated that Appellant did have visitors while he was incarcerated, specifically, his daughter and wife. Hansford acquired the audio recording of these visitations which he characterized as "phone calls." Visitation occurs while the visitor and inmate are face-to-face with a glass window separating them, and they communicate through two connected "telephones." The "phone calls" Hansford described to Investigator Kemplin were actually recordings of these visitations. Hansford stated that most of these conversations were discussions of the circumstances of the charges against Appellant.

28. Hansford was asked if Appellant ever requested that someone contact EKCC. Hansford recalled Appellant "saying it needed to be done."

29. On cross-examination, Hansford stated that if Appellant was having a problem getting the guard to allow him a phone call, he could have filed a grievance. When asked if that was a frequent problem, Hansford replied: "Some inmates do complain." Hansford admitted that the grievance form must also be requested from a guard.

30. As for the video of Appellant making a phone call, Hansford stated that it shows Appellant using a phone twice at the Nurse's Station. He was apparently calling his family to request that they bring his medications to him, but there is no audio recording of these calls.

31. Appellant, **Daniel Leland**, was a Correctional Officer at EKCC in West Liberty. Leland testified that in addition to his paid employment, he was also a volunteer at both the Red Cross and the Cone Valley Fire Department.

32. Appellant stated that immediately after the tornado hit West Liberty on March 2, 2012, he responded as a volunteer firefighter. His assigned task was to "seal off the bridge, and only allow in emergency vehicles." He worked there until 6:00 a.m. when he left that position and proceeded to his post at EKCC. He informed his third shift supervisor, Captain Witt, that he would be "working the disaster, and would not be going in to work." He worked for the Red Cross for two days. On the third day, March 5, 2012, he went to his assigned shift at EKCC. He was informed then that "everyone was on call." While at work that day, he contacted his Senior Captain, Sergeant Rose, and informed he had been scheduled to perform a "CAP" (Christian Appalachian Project) run the next day, from Morgan County to Johnson County.

33. The evening of March 5, 2012, at approximately 10:00 or 11:00 p.m., Appellant was arrested for Robbery, 2nd Degree, and taken to the Big Sandy Detention Center. He was allowed one phone call in "booking" and then proceeded to "Detox" where he remained for four days. Appellant stated he was not allowed to use the phone in "Detox."

34. At his request, Appellant was placed in the Segregation Unit. Two or three days later he obtained phone cards. "I asked to make calls a dozen times a day on all three shifts. They never let me," Appellant stated.

35. On March 7, 2012, Appellant was allowed to make a phone call in the Nurse's Station. He spoke to his ex-wife and daughter and arranged for them to get his medicine for him at his Morgan County trailer. That was the only phone call he was allowed to make, Appellant testified.

36. Appellant was released from Big Sandy Detention Center on March 21, 2012. He went to a preliminary hearing before a judge "who didn't feel the charge was warranted, and he 'OR'd' me."

37. Appellant stated he received the letter from Warden Beckstrom on March 23 or 24, 2012, when he went to pick up his mail. He first contacted Senior Captain Helton and then Warden Beckstrom, who told Appellant he was terminated. Appellant was asked to address the Warden's testimony that Appellant had told him he had previously contacted Lt. Nichol or Lt. Beck regarding his absence. Appellant answered: "I believed I had contacted the institution, but my recollection was not up to par due to my not being allowed to take all my medications . . . I thought I had spoken to several lieutenants, but evidently I got my dates wrong."

38. Appellant stated: "In the past seventeen years I have had it drilled into me that an officer had to call into the institution if he was going to miss work." Appellant stated that he had previously – some time during his first two years at EKCC – asked a supervisor if a family member could call in and he was told "it had to be the employee."

39. On cross examination, Appellant stated that as a Correctional Officer he was familiar with the grievance process, but he did not, in fact, file a grievance protesting his inability to use the phone. However, Appellant did ask to speak to a supervisor to complain about this. "They said they would get back to me when they had time, but never did." As for visitors, his daughter and ex-wife visited him several times during his incarceration, and his attorney came once. When queried if he had ever asked his family to make a call to EKCC for him, Appellant stated: "I discussed it with my attorney, but said I knew I had to make the call." Appellant denied that he was ever aware of an instance when a family member had called in for an employee.

40. The Hearing Officer, having listened to the CD recording, introduced as Appellee's Exhibit 4, notes the following pertinent statements on the recording.¹

3/10 – 15:06

- **Appellant states to an "older" woman²:** "They won't let me make a phone call. I've asked a dozen times each day."
- **Voice of older woman:** "She talked to the Senior Captain. Sandy and Sam(?) are on your side . . . they called their lawyer and they said unless you are convicted you cannot lose your job."
- **Voice of Appellant:** "I've got to call them within ten days or else I'll lose my job. I've been trying to let them know."
- **Voice of older woman:** "They know. It's been all over the news."
- **Voice of Appellant:** "They won't let me use the phone. They just say, 'we'll get back to you' . . . I've asked twelve times a day for three days. I've stopped asking."

¹ The Hearing Officer notes that the recording was very difficult to hear in certain portions.

² The Appellant speaks to two different women in this recording who do not identify themselves. According to the Appellant's testimony, one was his daughter and one was his ex-wife.

3/10 – 15:38

- **Voice of Appellant:** “I haven’t been able to talk to anyone in four days . . haven’t taken my meds in 48 hours. Can’t take C_____” (unintelligible).

3/10 – 15:53

- **Voice of younger woman:** “I called the person to see if you had a job. They would connect me to someone, but no one answered.”
- **Voice of Appellant:** “Try to connect with Senior Captain.”
- **Voice of younger woman:** “They can’t fire you unless you’re convicted.”

3/17 – 15:01

- **Voice of Appellant:** “I don’t get no rights. They won’t let me make a phone call. Not allowed to make a phone call for ten days, not to anyone.”

41. After listening to the CD recordings introduced as Appellee’s Exhibit 4, the Hearing Officer (pursuant to an Interim Order dated October 31, 2012) allowed the parties to present additional testimony to clarify questions raised by the Hearing Officer regarding the recorded conversations.

42. Appellant called **Joyce Sparks** as a witness on January 2, 2013. Sparks is Appellant’s ex-wife. She stated that she visited Appellant twice per week for the duration of Appellant’s incarceration at the Big Sandy Detention Center.

43. Sparks testified that she placed a call to EKCC sometime while Appellant was incarcerated, but she could not recall the specific day. Appellant had asked her to call the facility for him to report his absence from work. When she placed the call, “it took forever to get through.” When someone at EKCC finally answered, she said, “I am Joyce Sparks. I am calling for Daniel Leland.” The person to whom she spoke – he did not identify himself – replied to her: “We only have one phone line and we are using it for emergencies only.” Then the person hung up. Sparks stated she did not try to call back.

44. 101 KAR 2:102, Section 10(3) states:

An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

45. KRS 18A.005(24) states:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

46. KRS 18A.095(1) reads:

A classified employee with status shall not be dismissed, demoted, suspended, or other penalized except for cause.

47. KRS 18A.095(7) states:

If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

(a) The effective date of his dismissal or other penalization;

(b) The specific reason for this action, including:

1. The statutory or regulatory violation;
2. The specific action or activity on which the dismissal or other penalization is based;
3. The date, time, and place of the action or activity; and
4. The name of the parties involved; and

(c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

FINDINGS OF FACT

1. The Appellant was a classified employee with status and was employed as a Correctional Officer at the Eastern Kentucky Correctional Complex.

2. On March 2, 2012, a devastating tornado hit West Liberty, Kentucky. As a result of this natural disaster, all employees at EKCC were told by their shift commanders that their days off were temporarily cancelled.

3. After the tornado hit, Appellant informed his shift supervisor, Captain Witt, that he would be performing disaster relief for the Red Cross and would not be coming in to work for the next two days. On March 5, 2012, Appellant went to his assigned shift at EKCC. He informed his Senior Captain, Sgt. Rose, that he had previously been scheduled to do a Christian Appalachian Project (CAP) run to Johnson County and would be absent March 6, 2012. His next scheduled day to work was March 7, 2012.

4. In the late evening of March 5, 2012, Appellant was arrested for Robbery, 2nd Degree, and taken to the Big Sandy Detention Center. He spent his first few days there in the “detox” unit, which was facility protocol. After that, he was placed in a Segregation Unit at his request. He was released from Big Sandy on March 21, 2012.

5. On March 7, 2012, Appellant was allowed to make phone calls in the Nurses Station to his ex-wife and daughter. He testified that those calls were to arrange for his medication to be brought to him. According to Appellant, these were the only phone calls he was allowed to make.

6. On March 13, 2012, a letter, under the signature of Warden Beckstrom, was mailed by Certified Mail to his home address in West Liberty, Kentucky. This letter informed Appellant that he would be terminated by resignation effective March 17, 2012. A second copy of this letter was mailed by regular mail on March 14, 2012, to the same address.

7. Appellant stated he did not receive either letter until March 23 or 24, 2012, when he went to the post office to pick up his mail. While the return receipt of the certified letter was signed and returned to EKCC, there is no date on the receipt. The Human Resource Administrator, Betty Lindon, could not recall when it was returned to her office, nor did she date-stamp it.

8. At Appellant’s Unemployment Hearing, held in April 2012, Appellant asserted that he had not been allowed to make telephone calls while incarcerated at Big Sandy. Upon learning of that assertion, Warden Beckstrom contacted Internal Affairs Investigator Asa Kemplin. Kemplin, in turn, contacted the Investigator at Big Sandy, Byron Hansford, who assured Kemplin that Appellant had been allowed to use the phone “daily” and sent Kemplin a CD of recorded phone calls, introduced in the record as Appellee’s Exhibit 4.

9. None of the recordings introduced by Appellee (Appellee’s Exhibit 4) were actually the recording of telephone calls. They were, in fact, a recording of visitations between Appellant and his ex-wife and daughter. Appellant’s statements during these visitations corroborated his testimony that he was, in fact, not allowed to use the phone at the Big Sandy Detention Center. On March 10, 2012, Appellant complained: “They won’t let me make a phone call. I’ve asked a dozen times a day.” (at 15:06) On March 17, 2012, Appellant voiced the same concern: “I don’t get no rights. They won’t let me make a phone call. Not allowed to make a phone call for ten days, not to anyone.” (at 15:01).

10. Based on Appellant's testimony at the evidentiary hearing and the audio recording introduced by Appellee (Appellee's Exhibit 4), the Hearing Officer finds that Appellant was in fact not allowed to use the phone during his incarceration at Big Sandy (with the exception of the calls made in the Nurses' station to his family requesting medication). Appellee introduced no evidence at the evidentiary hearing to the contrary³.

11. The attempt by Appellant's ex-wife, Joyce Sparks, to call in for Appellant and report the reason for his absence from work was also futile. The person who answered the phone told Sparks the line was for emergencies only, then disconnected the line.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that the Department of Corrections' termination by resignation of Appellant was deficient in two ways: First, the Hearing Officer concludes that Appellant's absence from work was not "without notice to his supervisor," as required by 101 KAR 2:102, Section 10(3); and secondly, the notice of Appellant's resignation was not effective notice.

2. Section 10 of 101 KAR 2:102 devises a regulatory scheme under which an employee may be resigned (used in the passive sense) for failure to report immediately to the supervisor his absence from duty. An unreported absence shall be considered an absence without leave and constitutes grounds for disciplinary action. If the absence without notice to the supervisor lasts for ten working days, the department shall consider him as having resigned from his employment.

3. That series of events did not occur in the very unusual factual context of this appeal. First, the Department of Corrections knew exactly where Appellant was and why he had not reported to work. They were fully cognizant that Appellant had been arrested and was incarcerated at Big Sandy Detention Center. Secondly, while Appellant was aware of the need to call in to work, the evidentiary record established that the guards at Big Sandy did not allow him use of the phone. Finally, even the Appellant's ex-wife's attempt to call in for him was futile -- she was informed by a staff member of EKCC that the phone line was for emergency use only and the call was disconnected.

4. Under the unique fact scenario of this appeal, the Hearing Officer concludes that the Appellee did not satisfy its burden of proof to show that the Appellant's absence from work was "without notice to his supervisor" as required by 101 KAR 2:102, Section 10(3).

³ The memorandum that Asa Kemplin prepared for Warden Beckstrom's review was based on incorrect information supplied to him by Byron Hansford, Intelligence Officer at BSDC. Hansford incorrectly characterized to Kemplin that recordings of Appellant's visitations were proof Appellant had made phone calls while incarcerated.

5. Appellant was terminated from state employment by resignation for being “Absent without Leave,” pursuant to 101 KAR 2:102, Section 10(3).

6. Resignation pursuant to 101 KAR 2:102, Section 10(3) constitutes a penalization, as the term is defined at KRS 18A.005(24). Resignation, pursuant to this statute constitutes an act that diminishes the responsibility of an employee. As such, the resignation must be taken for proper cause. KRS 18A.095(1).

7. Because the action constitutes a penalization, it is necessary for the Agency to comply with the notice provisions of KRS 18A.095(7). These requirements include that the Appellant shall be notified of the effective date of the penalization. KRS 18A.095(8).

8. The Hearing Officer concludes that the Appellee’s notice of resignation (Appellee’s Exhibit 2) failed to provide notice of the effective date of the penalization as required by statute. While Appellee did mail a letter informing Appellant of his impending resignation⁴ to Appellant’s post office box address, it was uncontested that both Betty Lindon, Human Resource Administrator at EKCC, and Warden Gary Beckstrom were aware that Appellant had been arrested and was incarcerated at the Big Sandy Detention Center. In fact, the termination letter states: “. . . on March 5, 2012, you were arrested and are currently lodged in the Big Sandy Detention Center, Paintsville, KY.” (emphasis added.) Appellant obviously could not retrieve his mail, which included the resignation letter, until his release from incarceration, which occurred on March 21, 2012, four days after he was effectively “resigned.”

9. The Hearing Officer concludes the notice was not effective because the Appellant was notified after March 21, 2012, (the day of his release from incarceration and the earliest he could retrieve his mail) that he had been resigned effective March 17, 2012. The Hearing Officer concludes that notice after the fact is not effective notice. This conclusion is consistent with previous decisions of the Personnel Board, *John Holloway v. Transportation Cabinet*, Appeal No. 2008-296; 2010 WL 677198 (KY PB). *Debra Ratliff v. Transportation Cabinet*, Appeal No. 2008-291; 2010 WL 2936017 (KY PB).

10. Based on the evidence of record in the case, the Hearing Officer determines that the appropriate remedy pursuant to KRS 18A.095(22)(d) is to set aside the resignation of Appellant and restore him to his former position of Correctional Officer.

⁴ The letter was mailed on March 13, 2012, by certified mail, and on March 14, 2012, by regular mail.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DANIEL LELAND VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2012-110)** be **SUSTAINED** and that his termination be rescinded and that he be reinstated to the same position or a position of like pay and status. Further, that he be awarded back pay and benefits from the date of his dismissal to the date of his reinstatement subject to any appropriate offsets and that he otherwise be made whole. **KRS 18A.105 and 200 KAR 12:030.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Colleen Beach** this 28th day of March, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Wesley Duke
Hon. Joseph Lane



Steven L. Beshear
Governor

GARY BECKSTROM
WARDEN

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

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MARCH 13, 2012

J. Michael Brown
Secretary

LaDonna Thompson
Commissioner

Daniel L. Leland

Mr. Leland:

This is official notice that pursuant to 101 KAR 2:102, Section 10(3), Absence Without Leave, you will be terminated from state employment by resignation effective BOB March 17, 2012.

Records reveal that on Monday, March 05, 2012, you were advised by Lieutenant Steve Havens that all off days had been temporarily suspended. You have been absent from employment with the Department of Corrections, Eastern KY Correctional Complex, since March 07, 2012. Specifically, on March 05, 2012 you were arrested and are currently lodged in the Big Sandy Detention Center, Paintsville, KY. According to 101 KAR 2:102 Section 9(3), an employee who has been absent without leave or notice to his supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

If there is any reason that you believe this action is not justified, you may request to appear personally to show cause as to why you should not be processed as a resignation. If you do not make an appointment with me at 606-743-2800 ext. 241, within five (5) working days of the date of this letter, you will be terminated by resignation effective BOB March 17, 2012.

Pursuant to KRS 18A.095, you may have the right to appeal this action to the Kentucky Personnel Board. If you wish to exercise this right, submit the attached form to the Kentucky Personnel Board within sixty (60) days of receipt of this notice.

Sincerely,

Gary Beckstrom, Warden

Attachment - Appeal Form

cc: Tim Longmeyer, Secretary - Personnel Cabinet
LaDonna Thompson, Commissioner - Department of Corrections
Stephanie Appel, Director - Division of Personnel Services
Personnel File

Recommended Order Attachment A